

FILED

MAR 11 2016

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 BRIAN J. STRETCH (CABN 163973)
2 Acting United States Attorney

3 ALEX G. TSE (CABN 152348)
4 Chief, Civil Division

5 STEVEN J. SALTIEL (CSBN 202292)
6 Assistant United States Attorney

7 450 Golden Gate Avenue, Box 36055
8 San Francisco, California 94102-3495
Telephone: (415) 436-6996
FAX: (415) 436-6748
steven.saltiel@usdoj.gov

9 Attorneys for the United States

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 UNITED STATES, *ex rel.*, CHRISTOPHER) **UNITED STATES' NOTICE OF ELECTION TO**
14 KAES,) **DECLINE INTERVENTION; [PROPOSED]**
15 Plaintiff,) **ORDER TO UNSEAL**
16 v.) Case No. C 14-00649 LB
17 CALIFORNIA GENERATOR SERVICE)
18 CORPORATION, *et al.*,)
19 Defendants.)

20 Pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the United States notifies the Court
21 of its decision not to intervene in this action. Although the United States declines to intervene, it
22 respectfully refers the Court to 31 U.S.C. § 3730(b)(1), which allows the relator to maintain the action in
23 the name of the United States; providing, however, that the "action may be dismissed only if the court
24 and the Attorney General give written consent to the dismissal and their reasons for consenting." *Id.*
25 The United States Court of Appeals for the Ninth Circuit has held that, notwithstanding this language,
26 the United States only has the right to a hearing when it objects to a settlement or dismissal of the action.
27 *U.S. ex rel. Green v. Northrop Corp.*, 59 F.3d 953, 959 (9th Cir. 1995); *U.S. ex rel. Killingsworth v.*

Northrop Corp., 25 F.3d 715, 723-25 (9th Cir. 1994).

Therefore, the United States requests that, should either the relator or the defendants propose that this action be dismissed, settled, or otherwise discontinued, this Court provide the United States with notice and an opportunity to be heard before ruling or granting its approval.

Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that all pleadings filed in this action be served upon the United States. The United States also requests that orders issued by the Court be sent to the government's counsel. The United States reserves its rights to order any deposition transcripts and to intervene in this action, for good cause, at a later date, and to seek dismissal of the relator's action or claim. *See* 31 U.S.C. § 3730(c)(2), (3). The United States also requests that it be served with all notices of appeal.

Finally, the United States requests that the Court unseal: (1) relator's Complaint; (2) the summons, if any; (3) this Notice of Election to Decline Intervention, with (Proposed) Order to Unseal; and (4) all other matters occurring in this action after the date the Court enters the unsealing order.

DATED: March 9, 2016

Respectfully submitted,

BRIAN J. STRETCH
Acting United States Attorney

~~STEVEN J. SALTIEL~~
Assistant United States Attorney

~~[PROPOSED]~~ ORDER

The United States having declined to intervene in this action pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), IT IS HEREBY ORDERED that:

1. The Complaint, the summons, this Order, and the accompanying United States' Notice of Election to Decline Intervention are hereby unsealed.

2. The relator shall serve the Complaint on defendants.

3. The seal shall be lifted as to all other matters occurring in this action after the date of this

Order.

4. The parties shall serve all pleadings and motions filed in this action, including supporting

1 memoranda, upon the United States, as provided for in 31 U.S.C. § 3730(c)(3). The United States may
2 order any deposition transcripts and is entitled to intervene in this action, for good cause, at any time.

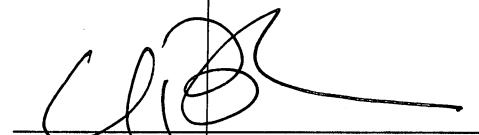
3 5. The parties shall serve all notices of appeal upon the United States.

4 6. All orders of this Court shall be sent to the United States.

5 7. Should the relator or the defendants propose that this action be dismissed, settled, or
6 otherwise discontinued, the Court will provide the United States with notice and an opportunity to be
7 heard before ruling or granting its approval.

8 IT IS SO ORDERED.

9 Dated: March 11 2016



HON. LAUREL BEELER
United States Magistrate Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee of the Office of the United States Attorney for the Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that she is causing a copy of the following to be served this date upon each of the persons indicated below at the address(es) shown::

UNITED STATES' NOTICE OF ELECTION TO DECLINE INTERVENTION; [PROPOSED] ORDER TO UNSEAL

United States, ex rel., Christopher Kaes, v. California Generator Service Corporation, et al.
Case No. C 14-00649 LB (Filed Under Seal)

Donald R. Warren
Warren & Benson Law Group
7825 Fay Ave., Suite 200
La Jolla, CA 92037

BY FIRST CLASS MAIL by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

CERTIFIED MAIL (#) by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

BY PERSONAL SERVICE (BY MESSENGER): I caused such envelope to be delivered by hand to the person or offices of each addressee above.

BY FACSIMILE (FAX): I caused each such document to be sent by facsimile to the person or offices of each addressee above.

BY E-MAIL: I caused each such document to be sent by e-mail to the person or offices of each address above

BY FEDERAL EXPRESS

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed March 9, 2016 at San Francisco, California

Kathy Terry
KATHY TERRY
Legal Assistant

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHRISTOPHER KAES, et al.,

Plaintiffs,

v.

CALIFORNIA GENERATOR SERVICE
CORPORATION, et al.,

Defendants.

Case No. 3:14-cv-00649-LB
SEALED

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 3/14/2016, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

18 Steven J. Saltiel
United States Attorney's Office
19 450 Golden Gate Avenue, PO Box 36055
San Francisco, CA 94102

Dated: 3/14/2016

Susan Y. Soong
Clerk, United States District Court

By: Lashanda Scott
23 Lashanda Scott, Deputy Clerk to the
24 Honorable LAUREL BEELER